

## PART 321—ELECTRONIC FILING OF APPLICATIONS AND CLAIMS FOR BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Sec.

321.1 Filing applications electronically.

321.2 Filing claims for benefits electronically.

AUTHORITY: 45 U.S.C. 355 and 362(l).

SOURCE: 69 FR 32260, June 9, 2004, unless otherwise noted.

### § 321.1 Filing applications electronically.

(a) *Electronic filing.* An application for benefits under the Railroad Unemployment Insurance Act may be filed electronically through the Board's Internet Web site, <http://www.rrb.gov>, utilizing a User ID and a PIN/Password.

(b) *Adjudication of applications filed electronically.* An application filed electronically shall be adjudicated in accordance with the procedures set forth in this part.

(c) *Date of filing.* The date of filing for an application filed electronically shall be the date that the electronic filing of the application is accepted by the Board's electronic system. If an attempt to file an application through the Board's electronic system is unsuccessful and is rejected by that system, the claimant must submit another application. If the subsequent application, filed either electronically or on paper, is received by the Board within 30 days from the date of the notification that the initial filing attempt was rejected, the Board will establish the filing date of the subsequent application as the date the rejected application was attempted to be filed.

### § 321.2 Filing claims for benefits electronically.

(a) *Electronic filing.* A claim for benefits under the Railroad Unemployment Insurance Act may be filed electronically through the Board's Internet Web site, <http://www.rrb.gov>, utilizing a User ID and a PIN/Password.

(b) *Adjudication of claims filed electronically.* A claim for benefits under the Railroad Unemployment Insurance Act filed electronically shall be adju-

dicated in accordance with the procedures set forth in this part.

(c) *Date of filing.* The date of filing for a claim for benefits under the Railroad Unemployment Insurance Act filed electronically shall be the date that the electronic filing of the claim is accepted by the Board's electronic system. If an attempt to file a claim for benefits under the Railroad Unemployment Insurance Act is unsuccessful and is rejected by the Board's electronic system, the claimant must submit another claim for benefits. If the subsequent claim for benefits, either filed electronically or on paper, is received by the Board within 30 days from the date of the notification that the initial filing was rejected, the Board will establish the filing date of the subsequent claim as the date the rejected claim was attempted to be filed.

## PART 322—REMUNERATION

Sec.

322.1 Introduction.

322.2 General definition of remuneration.

322.3 Determining the days with respect to which remuneration is payable or accrues.

322.4 Consideration of evidence.

322.5 Payments under vacation agreements.

322.6 Pay for time lost.

322.7 Dismissal, coordination, and separation allowances.

322.8 Miscellaneous income.

322.9 Subsidiary remuneration.

AUTHORITY: 45 U.S.C. 362(l).

SOURCE: Board Order 59-73, 24 FR 2487, Mar. 31, 1959, unless otherwise noted.

### § 322.1 Introduction.

The Railroad Unemployment Insurance Act provides benefits for a qualified employee's days of unemployment or days of sickness, as defined in section 1(k) of the Act. Under that section, no day can be a day of unemployment or a day of sickness for any employee if "remuneration" is payable or accrues to the employee for such day. In computing the amount of benefits payable to an employee for days of unemployment or days of sickness in any registration period, or in determining whether the employee has satisfied the waiting period requirement, the Board will not count any day with respect to

## Railroad Retirement Board

## § 322.3

which remuneration is payable or accrues to the employee. Section 322.2 defines the term “remuneration” and explains what types of payments to employees constitute remuneration.

[65 FR 14459, Mar. 17, 2000]

### § 322.2 General definition of remuneration.

(a) *Remuneration.* (1) Remuneration includes pay for services for hire, pay for time lost as defined in § 322.6, and other earned income payable or accruing with respect to any day. Income is “earned” if it is payable or accrues in consideration of services and if such services were in turn rendered in consideration of the income payable or accruing.

(2) Remuneration includes income in the form of a commodity, service, or privilege if, before the performance of the service for which it is payment, the parties have agreed upon the value of such commodity, service, or privilege, and that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege.

(3) Remuneration for a working day that includes a part of two consecutive calendar days is deemed to have been earned on the first of such two days.

(b) *Subsidiary remuneration.* For the purpose of this part, remuneration does not include subsidiary remuneration, as defined in § 322.9. Subsidiary remuneration for any day does not prevent such day from being a day of unemployment or a day of sickness, except as explained in § 322.9.

(c) *Supplemental unemployment or sickness benefits.* The term remuneration does not include money payments received by an employee pursuant to any nongovernmental plan for unemployment or sickness insurance, as defined in part 323 of this chapter. Employer payments of sick pay to an employee are remuneration, except when payment is made pursuant to a nongovernmental plan for sickness insurance.

[65 FR 14459, Mar. 17, 2000]

### § 322.3 Determining the days with respect to which remuneration is payable or accrues.

(a) *Payable or accrues.* In determining whether remuneration is “payable” or “accrues” to an employee with respect to a claimed day or days, consideration shall be given to such factors as

(1) The intention of the parties with respect to the remuneration as indicated in employment contracts, in any expressed or implied agreements between the parties, and by the actions of the parties;

(2) Any evidence, such as vouchers or agreement of the parties, relating the remuneration to a particular period of time or indicating that the remuneration accrued or became payable without reference to any particular period of time;

(3) The measure by which the amount of remuneration was determined;

(4) Whether the amount of the remuneration is proportionate to the length of time needed to render the service for which it is payment;

(5) Whether the service for which the remuneration accrues is required to be rendered on any particular day or particular days; and

(6) Whether a specified amount of the remuneration is contingent upon a result accomplished on a particular day or particular days.

(b) *Layover days.* Remuneration shall not be regarded as payable or accruing to an employee with respect to his or her “layover” days between regular assignments in train and engine service solely because they are termed “layover” days. But no such “layover” day may be considered as a day of unemployment or sickness. See § 332.6 of this chapter.

(c) *Guaranteed earnings.* A payment under a plan which guarantees an amount of earnings or mileage in a specified period is remuneration with respect to each day in the specified period.

(d) *Equivalent of full-time work.* An employee who works fewer than five days each week under a compressed work schedule that provides the equivalent of full-time employment does not earn remuneration with respect to his or her additional rest days resulting

## § 322.4

## 20 CFR Ch. II (4–1–09 Edition)

from such work schedule, but such employee will not be considered to be available for work on such rest days. See § 327.10(d) of this chapter.

[Board Order 59-73, 24 FR 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

### § 322.4 Consideration of evidence.

(a) *Initial proof.* A claimant's certification that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any such day shall constitute sufficient evidence for an initial finding that no remuneration is payable or has accrued to him or her with respect to such day, unless a base year employer reports that he or she worked on days claimed or received payments that constitute remuneration as defined in this part, or unless there is other conflicting evidence.

(b) *Investigation.* When there is a question as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

(Approved by the Office of Management and Budget under control number 3220-0049)

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 52 FR 11017, Apr. 6, 1987; 65 FR 14460, Mar. 17, 2000]

### § 322.5 Payments under vacation agreements.

(a) *General.* In ascertaining the accrual of remuneration under a vacation agreement, consideration shall be given to the applicable agreements and practices, the interpretations of such agreements and practices developed by the parties, and the actions of the parties pursuant thereto. When there is information that an employee has received or is to receive payment under a vacation agreement, such payment shall, in the absence of evidence to the contrary, be considered to be remuneration with respect to the days to which the payment is assigned.

(b) *Vacation pay.* If an employee takes a vacation in accordance with a vacation agreement, the payment for such vacation shall constitute remuneration with respect to the days in the vacation period for which the pay-

ment is made. An employee shall be regarded as taking a vacation when, in accordance with the applicable agreements and practices (1) he is absent from work during a scheduled or assigned vacation period; (2) he is required to take his vacation with pay while he is on furlough; or (3) he chooses to take his vacation with pay while he is unemployed or absent from work due to illness or other personal circumstances.

(c) *Pay in lieu of vacation.* If a payment in lieu of vacation is made to an employee under a vacation agreement such payment shall not constitute remuneration with respect to any particular day or days. A payment under a vacation agreement shall be regarded as in lieu of vacation if:

(1) The payment is made at the end of the vacation year to an employee who did not take his vacation during such year; or

(2) The payment is made after the employee's death, or after he ceased service for the purpose of receiving an annuity, and the payment is credited to the employee's last day of service; or

(3) It is otherwise established that the parties intended the payment to be in lieu of vacation, without reference to any particular period.

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

### § 322.6 Pay for time lost.

(a) *Definition.* The term "pay for time lost" means any payment made to an employee with respect to an identifiable period of time during which the employee was absent from the active service of the person or company making the payment, including absence on account of personal injury. The entire amount paid to an employee who was absent on account of personal injury is pay for time lost if such amount includes pay for time lost, unless at the time of payment the parties, by agreement, specify a different amount as the amount of the pay for time lost and the period of time covered by such pay. The amount allocated to time lost is remuneration for every day in the period of time lost. The amount of a payment for personal injury that is apportioned to factors other than time lost

## Railroad Retirement Board

## § 322.8

is, nevertheless, a portion of “damages” for the purposes of part 341 of this chapter.

(b) *Employment relationship required.* Pay for time lost shall not be deemed to have been earned on any day after the day of the employee’s resignation or other termination of his employment relationship.

(c) *Initial evidence.* A report that an employee has received or is to receive pay for time lost shall, in the absence of evidence to the contrary, be considered sufficient for a finding that remuneration is payable with respect to each day in the period to which the pay is assigned.

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

### § 322.7 Dismissal, coordination, and separation allowances.

(a) *Coordination or dismissal allowance.* Coordination or dismissal allowances are payments made to an employee who has been furloughed for a specified period of time during which he or she continues in an employment relationship and remains subject to call. Such pay is remuneration with respect to each day in the month or other period for which it is payable. The employer shall be held liable to the Board for any benefits paid to the employee and found recoverable under section 2(f) of the Railroad Unemployment Insurance Act by reason of the payment of any such allowances or other pay for the same days for which the Board paid benefits.

(b) *Separation allowance.* A separation allowance or severance payment made to an employee who voluntarily or involuntarily terminates his or her employment relationship is not remuneration with respect to any day after the employment relationship is severed. An employee who is paid a separation allowance, whether in a lump sum or in installments, is disqualified by section 4(a-1)(iii) of the Railroad Unemployment Insurance Act from receiving unemployment or sickness benefits for the period of time approximating the length of time it would have taken the employee to earn, at his or her “straight” time rate of pay, the amount of the separation allowance if

he or she had continued working in the job from which he or she separated.

[65 FR 14460, Mar. 17, 2000]

### § 322.8 Miscellaneous income.

(a) *Income from self-employment.* In determining whether income from self-employment is remuneration with respect to a particular day or particular days, consideration shall be given to whether, and to what extent, (1) such income can be related to services performed on the day or days and (2) the expenses of the self-employment can be attributed to the day or days. Income from services performed by an individual on a farm which he owns or rents, or in his own mercantile establishment, ordinarily is not remuneration with respect to any day.

(b) *Income from investment.* Income in the form of interest, dividends, and other returns on invested capital which is not coupled with the rendition of personal services shall not be regarded as remuneration.

(c) *Commissions on sales.* Commissions on sales shall be regarded as remuneration with respect to the day or days on which sales are made.

(d) *Payments for service as a public official.* In determining whether income for service as a public official is remuneration and, if so, the particular day or days with respect to which such remuneration is payable or accrues, consideration shall be given to such factors as (1) the amount of the income; (2) the terms and conditions of payment; (3) the character and extent of the services rendered; (4) the importance, prestige, and responsibilities attached to the position; (5) the day or days on which services, or readiness to perform services, are required; and (6) the provisions of the applicable statutes.

(e) *Payments to local lodge officials.* A payment by a local lodge of a labor organization to an employee for services as a local lodge official shall be regarded as subsidiary remuneration if such payment does not exceed an average of \$15 a day for the period with respect to which it is payable or accrues, unless there is information that the work from which the payment is derived does not require substantially less than full time as determined by generally prevailing standards, or is

not susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(f) *Public relief payments.* Public relief payments made in consideration of need shall not be regarded as remuneration.

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

**§ 322.9 Subsidiary remuneration.**

(a) *Definition.* The term “subsidiary remuneration” means remuneration not in excess of an average of \$15 per day for the period with respect to which it is payable or accrues, if

(1) The work from which the remuneration derives requires substantially less than full time as determined by generally prevailing standards; and

(2) The work is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(b) *Exception.* If a claimant’s remuneration is “compensation” as defined in part 302 of this chapter, such remuneration is not subsidiary unless the claimant had base year compensation from a different position or occupation of not less than two and one-half times the monthly compensation base for months in the base year in which he or she received the remuneration. Compensation in excess of an average of \$15 per day is remuneration for the days for which it is payable or accrues.

(c) *Period for which remuneration is payable or accrues.* The “period” of time used in determining whether remuneration averages more than \$15 per day depends on the terms and conditions of the employment and the rate of payment for the work. If the claimant is paid a monthly salary, the “month” is the period with respect to which the pay must average not more than \$15 per day. The average is the monthly salary divided by 30. If the claimant is paid a weekly salary, the amount of the salary is divided by seven. If the claimant is paid by the hour or the day, the “period” is the day. Where payment is made by the hour or the day, the pay is not added up and then averaged out over the week or the

month. For example, earnings of \$20 on one day and \$10 on another day do not average out to \$15 per day so as to permit both days to be considered as days of unemployment or days of sickness.

(d) *Substantially less than full time.* The phrase “substantially less than full time” means employment of not more than four hours per day.

(e) *Compatibility with full time employment.* Work is considered to be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(f) *Determinations.* The Board shall make a determination whether remuneration is subsidiary by applying the standards in this section to the facts of each case. Earnings that average more than \$15 per day are not subsidiary remuneration under any circumstances. Also, earnings of any amount that are included in a claimant’s qualifying base year compensation are not subsidiary remuneration. Even if earnings do not exceed an average of \$15 per day, they may still not be subsidiary remuneration if the claimant worked more than four hours per day or if the work had to be performed at such times and under such circumstances as to be inconsistent with the holding of normal full-time work in his or her regular railroad work. If the evidence does not establish that the earnings are subsidiary remuneration, the question whether they are remuneration for particular days will then be considered.

(g) *Examples.* The following examples illustrate this section.

(1) A claimant receives a salary of \$350 per month for serving as secretary-treasurer of the local lodge of his union. He performs a variety of duties at his own convenience while holding down a full-time railroad job in his craft. The average payment per day is not more than \$15 and is, therefore, subsidiary remuneration.

(2) A claimant worked three hours per day, at \$5 per hour, in the family insurance business. He was marked up for work as an extra board trainman

## Railroad Retirement Board

## § 323.2

and worked whenever he was called. When called, he skipped work in the family insurance business. His insurance earnings of \$15 per day were subsidiary remuneration.

(3) While unemployed from her railroad job, a claimant took a job as a school bus driver. She worked from 7 a.m. to 9 a.m., and 2:30 p.m. to 5:30 p.m. Her regular railroad job was a daytime job from 8 a.m. to 4:30 p.m. Her pay as a school bus driver was not subsidiary remuneration because the job was not compatible with the holding of full time work in her regular railroad occupation.

[65 FR 14460, Mar. 17, 2000]

### PART 323—NONGOVERNMENTAL PLANS FOR UNEMPLOYMENT OR SICKNESS INSURANCE

Sec.

323.1 Introduction.

323.2 Definition of nongovernmental plan for unemployment or sickness insurance.

323.3 Standards for Board approval of a nongovernmental plan.

323.4 Guidelines for content of a nongovernmental plan.

323.5 Submitting proposed plan for Board approval.

323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.

323.7 Effective date.

AUTHORITY: 45 U.S.C. 362(1).

SOURCE: 56 FR 26328, June 7, 1991, unless otherwise noted.

#### § 323.1 Introduction.

(a) This part defines the phrase *nongovernmental plan for unemployment or sickness insurance* and sets forth the procedure by which an employer may obtain a determination by the Railroad Retirement Board as to whether a particular plan that such employer maintains for its employees qualifies as a nongovernmental plan. In general, any payment by an employer to an employee for services rendered as an employee will be considered to be *remuneration* within the meaning of section 1(j) of the Railroad Unemployment Insurance Act and part 322 of this chapter. This includes employer payments that relate to an employee's loss of earnings during a period of time when

the employee is unemployed or sick, including sickness resulting from injury. The exception is when an employer pays an employee a benefit pursuant to the provisions of a nongovernmental plan for unemployment or sickness insurance established by an employer for the benefit of its employees. Benefit payments under such plans are not remuneration and do not affect an employee's eligibility for unemployment or sickness benefits under the Railroad Unemployment Insurance Act.

(b) This part does not have any general applicability to private insurance contracts under which an insurance company, pursuant to a policy of insurance maintained by or for an employee, pays medical or hospital expenses or other cash benefits to or in behalf of an employee. Nor does this part apply to any private plan for relief of unemployment established by a party other than an employer such as, for example, a plan established by a labor union under which it undertakes to pay benefits to striking members of the union out of a strike insurance fund. Insurance policy benefits and strike unemployment benefits, although paid under plans that are nongovernmental in nature, are not considered remuneration for services under the general definition of *remuneration*. See part 322 of this chapter.

#### § 323.2 Definition of nongovernmental plan for unemployment or sickness insurance.

A nongovernmental plan for unemployment or sickness insurance is a benefit plan, program or policy that is in the nature of insurance and is designed and established by an employer for the purpose of supplementing the benefits that an employee of such employer may receive under the Railroad Unemployment Insurance Act during a period of unemployment or sickness. A nongovernmental plan may be established by labor-management agreement or by unilateral employer action. Payments under such plans are referred to as supplemental unemployment benefits (SUB pay) or supplemental sickness benefits, rather than as wages, salary or pay for time lost, because their inherent nature is to supplement benefit payments under the Railroad